

Michigan Outstate Seller of Beer Licensing Requirements and General Information

An Outstate Seller of Beer (“OSSB”) license:

- License issued to beer supplier by the Michigan Liquor Control Commission (“Commission”) to ship beer into Michigan and sell to Michigan wholesalers.
- Must be located in the United States (may be located in Michigan).
- Must be a holder of an “Importer’s” or “Wholesaler’s” Basic Permit or a “Brewer’s Notice” issued by the Bureau of Alcohol, Tobacco & Firearms (“BATF”).
- May sell and deliver **only** to Michigan wholesalers.
- No direct shipments allowed from OSSB to Michigan retailers or Michigan consumers.
- Must enter into exclusive territory agreements with their wholesalers.
- Responsible for registering all brands with the Commission.
- Responsible for payment of Michigan beer excise tax.
- \$1,000.00 annual license fee (licensing year is from May 1st to April 30th each year)
- \$1,000.00 continuous Surety Bond required.

An OSSB license may be issued to any of the following entities pursuant to Rule 436.1609 and the Liquor Control Code:

- DOMESTIC MANUFACTURER - A manufacturer located outside of this state, but in the United States, who manufactures and packages its own beer and sells same to licensed Michigan wholesalers.
- EXCLUSIVE SALES AGENT - A person located in the United States who purchases beer from a manufacturer of beer located outside of this state, but in the United States, if the amount of beer imported into this state by that person is 5,000 barrels or less per calendar year, and sells the beer to licensed Michigan wholesalers. In addition, a person who is issued an OSSB license under the provisions of this subdivision shall be designated by the manufacturer of beer as its sole and exclusive sales agent in Michigan for a brand or brands of beer produced by that manufacturer and shall be responsible for the quality of beer shipped into and sold in this state.
- IMPORTER - A person located in the United States who directly imports foreign beer and/or malt liquors and sells same to licensed wholesalers.

How To Apply For An OSSB License:

All applicants for an Outstate Seller of Beer license must submit the following documents:

- LICENSE APPLICATION - Submit executed “Application for Michigan Non-Retail License” (Form LC/MW-100). Applicants whose facility will be located in Michigan must submit an executed “Application For New Licenses or Application of Buyers for Transfer of Ownership or Interest in License” (LC-687).
- BOND APPLICATION - Surety Bond (Form MW-816), executed by an insurance company in the amount of \$1,000.00 for the initial license. Subsequent year’s surety bond amount is the average monthly beer excise tax paid for the preceding calendar year, with a minimum of \$1,000.00. This bond is continuous and requires a 30-day written notice to the Commission if terminated.

- **LICENSE FEE** - \$1,000.00 license fee paid by certified check, bank draft or money order, payable to the “State of Michigan”. Licensing year is May 1st through April 30th; license fee may not be prorated; and must be renewed annually by May 1st.
- **FEDERAL BASIC PERMIT OR “BREWER’S NOTICE”** (Issued by BATF, submit whichever Permit is applicable.)
 - *Importer of Foreign Beer* – “Importer’s” Basic Permit
 - *Domestic Manufacturer* - “Brewer’s Notice”
 - *Exclusive Sales Agent (Domestic Beers Only)* – “Wholesaler’s” Basic Permit for applicant and copy of “Brewer’s Notice” for each brewer represented as an ESA; a list of brands to be sold in Michigan; and a letter from each brewer represented as an ESA, stating that applicant is the exclusive sales agent in the U.S. for those specific brands

In addition to the LC-100 and other documents required by all applicants, **CORPORATIONS** must submit the following information pursuant to Rule 436.1109:

- Copy of current, filed Articles of Incorporation.
- Current “Certificate of Good Standing” from the state where incorporated if incorporated outside of this state.
- “Report of Corporate Officers, Board of Directors & Stockholders” (Form LC-52).

In addition to the LC-100 and other documents required by all applicants, **LIMITED LIABILITY COMPANIES** must submit the following information pursuant to Rule 436.1110:

- Copy of current, filed Articles of Organization.
- Current “Certificate of Good Standing” from the state where LLC is organized in.
- Copy of the Operating Agreement, by-laws, or agreements entered into by the members.
- “Report of Limited Liability Companies Members, Managers and Assignees” (Form LC-52A).
-

Send all applications to: Michigan Liquor Control Commission
 Manufacturers & Wholesalers Section
 P.O. Box 30005
 Lansing, MI 48909
 (517) 322-1415
www.michigan.gov/cis (Click on “Liquor Control”).

Licensing Process:

Upon submission of the required documents, the application will be submitted to the Commission at the earliest possible Licensing Meeting for review and consideration. The applicant is notified in writing of the Commission’s decision and provided with a copy of the Commission Order. If approved and the file is complete, the applicant will also be mailed the license at this time. If approved but additional documentation is required, the applicant will be advised of what steps need to be taken to complete the licensing process. If denied, the applicant will have the opportunity to an Appeal Hearing before the Commission.

License Fees:

Initial license fee for and annual renewal fee for an OSSW license is \$300.00. Licenses are renewed annually on May 1. The license fee may not be prorated for part-year licensure. License fee is payable upon MLCC approval of your application.

- MCL 436.1525

Manufacturing & Labeling:

Beer must be manufactured in accordance with federal beer regulations published in the Code of Federal Regulations (CFR) Title 27, Part 25. Beer must be labeled in accordance with the Code of Federal Regulations (CFR) Title 27, Part 7. Contact BATF for details.

- Rule 436.1611

Label Registration:

All beer and malt products sold in Michigan must have labels approved and receive a Michigan registration number before it is sold in Michigan. The Commission may disapprove any beer label submitted for registration that is deemed to promote violence, racism, sexism, intemperance, or intoxication or to be detrimental to the health, safety, or welfare of the general public. To obtain a registration number of approval for a product, simply send us one copy of the Federal Label Approval, plus one set of loose labels. Please do not stick labels on Federal approval form. One copy of the Federal label approval will be returned to you with the registration number on it.

- Rule 436.1611

Mandatory Label Information: (per BATF regulations)

- Brand name listed.
- Class, type or, in lieu of, a truthful and adequate statement of composition shall appear on the brand label of the product.
- Name and address: (for coolers, see separate sheet of requirements)
- American beer - name of bottler or packer and place (state and city) where bottled or packed.
- Imported beer - must state the words "Imported by" or a similar appropriate phrase (that approved by BATF), and immediately thereafter the name of the permit holder who is the importer, agent or sole distributor, together with the principal place of business in the United States.
- Net contents
- Alcohol content by volume is optional.

Container Deposits:

Beer, mixed wine drink (wine coolers) & mixed spirit drink (spirit coolers) sold in containers of one (1) gallon or less must comply with the Beverage Container Act (Initiated Law of 1976) by requiring a deposit of not less than ten (10) cents per container when sold to consumers.

Containers must be clearly labeled with the name of this state and the deposit amount. "MI" or "MICH" are acceptable abbreviations for Michigan. The wholesaler who sells the returnable containers to their retail customers initiates the container deposit.

- MCL 445.571 – MCL 445.576

Wholesale Sales Territories:

Michigan Liquor Control Code of 1998, Section 436.1401, states that a manufacturer and outstate seller of beer and malt beverages shall grant a sales territory to each of its wholesalers within which the wholesaler shall be a distributor of the specified brand or brands of the OSSB. The territory is determined by the OSSB, not the Commission. If the OSSB manufactures or supplies more than 1 brand of beer or malt beverage, they may grant exclusive sales territories to different wholesalers for the sale of the different brand or brands. With certain exceptions, a brand extension is not considered a new or different brand and shall be assigned to the wholesaler that was granted the sales territory for the brand from which the brand extension resulted.

While territory agreements for beer, mixed wine drink and mixed spirit drink products must be exclusive, territories for wine products may overlap.

MCL 436.1401, MCL 436.1403

Michigan Beer Excise Tax Report:

The OSSB is responsible for paying the Michigan beer excise tax on all beer shipped and sold in Michigan. The Michigan beer excise tax rate is \$6.30 per barrel or \$.45726 per 24 x 12 oz. case. The "Michigan Beer Excise Tax Report" (LC-803) is due with payment of the appropriate tax amount in the Lansing office of the Commission, postmarked on or before the 15th of each month, for beer shipped into Michigan during the preceding calendar month.

An OSSB who during the preceding calendar year average \$50,000 or more monthly beer excise taxes must submit two (2) beer excise tax reports per month. The first report shall be submitted to the Commission and postmarked by the last day of the month, a report with beer excise tax payment for either the actual beer shipments made into this state during the first 15 calendar days or an estimate of beer shipments made into this state during the first fifteen (15) calendar days. A second report, postmarked no later than the 15th day of the month, the balance in the actual payment due minus the estimate payment already made. OSSB must file the monthly Michigan Beer Excise Tax Report whether any shipments are made or not. Simply indicate "no shipments" on the report when there has been no activity during the preceding month.

In addition to the Michigan Beer Excise Tax Report, an OSSB must submit a "Beer Sold To Michigan Wholesalers" (Form LC-886) summarizing monthly shipments made to Michigan wholesalers. A computer printout with the appropriate information may be submitted in lieu of the Form LC-886.

- Rule 436.1621, Rule 436.1631

Cash Sales:

All sales and purchases of alcoholic beverages shall be for cash only. Wholesalers are prohibited from offering credit terms to retail licensees. Payment by wholesalers must be made no later than when the wholesaler takes possession of the beer. (Wholesaler may first verify that the shipment agrees with the invoice but should mail the OSSB a check within a couple of days.) Payment may be made prior to shipment but is not mandatory. Payment may also be made by EFT no later than the next business day after receipt of shipment.

- MCL 436.2013

Beer Invoices:

An OSSB must provide each wholesaler with two (2) copies of each invoice at the time of each sale and delivery of beer to the wholesaler.

- Rule 436.1631

Delivery To Wholesaler Or Warehouser Only:

An OSSB may ship and deliver beer only to the licensed premises of a Michigan wholesaler or to the licensed premises of a Michigan warehouser. Beer may not be delivered by an OSSB to a Michigan retail licensee or to a Michigan consumer.

- Rule 436.1617

Salesperson License:

A person employed or representing an OSSB, other alcoholic beverage supplier or a wholesaler, who sells, delivers, promotes or otherwise assists in the sale of alcoholic liquor in the State of Michigan must obtain a Salesperson license from the Commission. Form LC/MW-843 must be executed and submitted to the Commission with a \$35.00 fee. Form LC/MW-843 is available from the Commission Website at: www.michigan.gov/cis (Click on “Liquor Control” in left-hand column).

- MCL 436.1853

Samples:

OSSB and wholesalers are allowed to sample their products with on-premises or off-premises retail licensees and the retailer’s employees. Sample tastings may not be offered to consumers. All containers used to sample products with retailers must be marked with the word “Sample” with lettering at least ½-inches high. While suppliers and wholesalers may offer tasting samples from multiple beverages, only one (1) sample container of 750 ml size or smaller may be left with a retail licensee for sampling by the retailer and their staff. Again, the container must be marked “Sample”. A sample container must be removed from the premises within 24 hours and again may not be sampled by consumers.

- Rule 436.1001, Rule 436.1421, Rule 436.1511, Rule 436.1513, Rule 436.1863

Price Posting:

An OSSB is not required to post their prices to wholesalers with the Commission. Michigan wholesalers are required to post their prices to retailers with the Commission. Beer wholesalers must post prices for new products or price changes with the Commission. OSSB should be aware that Michigan Wholesalers must maintain any temporary price reduction for no less than 180 consecutive calendar days, regardless of whether their supplier raises their prices during the temporary price reduction.

- Rule 436.1625

Interest In Another License:

Michigan statute strictly prohibits an OSSB or any other supplier from holding any interest, directly or indirectly, in any other license. Examples of prohibited interests include: stock ownership in another licensee, leasing real estate to/from another licensee, interlocking officers or directors between licensees, financial interest in any manner of another license. An OSSB may hold multiple licenses for other OSSB locations if all licenses are issued in the same legal entity. A Michigan wholesaler may hold an OSSB license in the same legal entity. An OSSB may hold an Outstate Seller of Wine (“OSSW”) license or an Outstate Seller of Mixed Spirit Drink (“OSSMS”) license in the same legal entity as their OSSB license.

- MCL 436.1603

Barrel Deposit:

An OSSB shall collect a barrel deposit of \$10.00 for a barrel, ½ barrel, and ¼ barrel of wine or mixed wine drink. A \$10.00 cash refund must be made to a licensee who has made the deposit and returned the barrel for refund.

- Rule 436.1629

Aid and Assistance:

Section 609 of the Code, being MCL 436.1609, and Rule 436.1035 prohibit an alcoholic beverage supplier or wholesaler from aiding or assisting any other licensee by giving them anything of value. Further, a licensee is prohibited from accepting aid and assistance from another industry member. Basically, alcoholic beverage suppliers are prohibited from giving anything of value to wholesalers or retailers. Likewise, wholesalers are prohibited from giving anything of value to retailers. This principle is intended to provide a level playing field for all industry members. Suppliers are prohibited from conducting incentive contests offering awards or prizes to wholesalers or their employees. Suppliers and wholesalers are prohibited from conducting incentive promotions offering awards or prizes to retailers or their employees. Suppliers may not give anything of value to their wholesalers or their employees. Suppliers and wholesalers are prohibited from giving anything of value to retail licensees, including but not limited to: alcoholic beverages, merchandise, furniture, fixtures, equipment, uniforms, cash or loans, labor, etc. While wholesalers and suppliers may provide point-of-sale materials such as posters, banners, table tents, flyers, etc., to retailers promoting their brands and prices, they are prohibited from providing anything that has any secondary use, value or purpose, other than actual advertising value to retailers without prior Commission approval. This same principle prohibits suppliers and wholesalers from providing free advertising, incentive programs, free or discounted product, draft system installation and maintenance, etc. Violations in the aid and assistance statute will result in all participants (retailer, wholesaler and supplier) being cited before the Commission.

- MCL 436.1609, Rule 436.1035

Rebates, Special Purchase Allowances, & Quantity Discounts:

An OSSB is prohibited from rebating any money to wholesalers. OSSB may offer special purchase allowances to wholesalers as long as the allowance is offered to all wholesalers and is based on the wholesaler purchases at the time of the allowance and not based on past sales. OSSB may offer quantity discounts to their wholesalers but may not offer free merchandise to their wholesalers.

- MCL 436.1609

Michigan Three-Tier Distribution System:

Michigan is a highly regulated three-tier distribution state. All alcoholic beverages shipped and sold to Michigan consumers must go through each of the three licensed distribution tiers (supplier→wholesaler→retailer). An OSSB license is required to ship beer into Michigan and is authorized to ship sell beer to licensed Michigan wholesalers only. The Michigan wholesaler is then authorized to ship/sell to the licensed Michigan retailers. The licensed Michigan retailer is the only entity authorized to sell alcoholic beverages to consumers. **Under no circumstances may an OSSB or any other out-of-state company ship alcoholic beverages directly to Michigan consumers.**

How to Contact BATF: www.atf.treas.gov

Federal Basic Permits:
BATF
Technical Services
550 Main St., Rm 6525
Cincinnati, OH 45202
(800) 398-2282

Federal Label Approvals:
BATF
Alcohol Labeling & Formulation
650 Massachusetts Ave., N.W.
Washington, DC 20226
(866) 927-2533

Michigan Regional Office:
BATF
1155 Brewery Park Blvd.
Suite 300-A
Detroit, MI 48207-2602
(313) 393-0085

How To Contact The Michigan Liquor Control Commission:

Questions relating to Outstate Sellers of Beer and other non-retail licenses may be directed to:

Michigan Liquor Control Commission

Manufacturers & Wholesalers Section

P.O. Box 30005

Lansing, MI 48909

(517) 322-1415 (517) 322-5046 (fax)

twhite@michigan.gov

www.michigan.gov/cis (Click on "Liquor Control".)